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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/870,147

05/30/2001

Toshiaki Tsuboi

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05/02/2008

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EXAMINER

PASS, NATALIE

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

05/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/870,147	TSUBOI ET AL.	
	Examiner	Art Unit	
	Natalie A. Pass	3626	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-5,7-13 and 15-17.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Robert Morgan/
Primary Examiner, Art Unit 3626

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1-5, 7-13, and 15-17 have not been amended and would be rejected for the same reasons applied in the previous Office Action (paper number 20080106).

As per Applicant's arguments on pages 7-12 of the After-Final response that the combined references fail to teach features including "generating health promotion information and health promotion timing, from a stored scenario, corresponding to said lifestyle and said level of readiness for change of said client to prepare a health promotion schedule of said client that includes said health promotion information and health promotion scheduled date based on said health promotion timing," as recited in claims 1, 9, and 17, Examiner respectfully disagrees. As noted in the previous Office Action, Examiner interprets Strecher's teachings of "the invention uses health risk and psychosocial information collected from the user of the process. This information is then preferably entered into a computer algorithm that uses the information to create tailored behavior change and adherence feedback" and "using these data, the computer algorithm produces [reads on "generates"] ... [...] ... single month calendar sheets or a series of date book pages ... [...] ... preferably include at least the months relevant to the health-related behavior change phases of the user. These calendar or date book sheets can be provided to the user at the same time or sequentially over the actual months of the year" (Strecher; column 2, line 63 to column 3, line 4) and Strecher's teachings of "the monthly calendar or date book sheets contain specific instructions and advice associated with the history and patterns of the existing health-related behavior, motives to changing the health related behavior, the behavior change goal set, the specified dates for beginning the change, the phases of change, and barriers to changing the health-related behavior" (Strecher; column 2, line 40 to column 3, line 12) as teaching a form of "generating health promotion information and health promotion timing, from a stored scenario, corresponding to said lifestyle and said level of readiness for change of said client to prepare a health promotion schedule of said client that includes said health promotion information and health promotion scheduled date based on said health promotion timing." Further, Examiner respectfully notes that although it was the combined teachings of Strecher and Joao that were applied in the rejection of claim 1 under 35 USC § 103, Applicant analyzes the applied references separately and argues each of the references individually. In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed Cir. 1986).

As per Applicant's arguments on page 9 of the After-Final response that Strecher teaches only "obtaining" and not "generating," as noted and discussed in the previous Office Action, Examiner interprets Strecher's teachings of "the computer algorithm produces ... [...] ... single month calendar sheets or a series of date book pages ... [...] ... preferably include at least the months relevant to the health-related behavior change phases of the user." and "specific instructions and advice ... [...] ... health-related behavior" (Strecher; column 2, line 63 to column 3, line 4)" to teach a form of "generating" the health promotion information and health promotion timing information.

As per other arguments, Applicant apparently rehashes arguments previously addressed in the Final Office Action (paper number 20080106).